vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1177 OF 2005
IN
SUIT NO.2551 OF 2004

Nilesh C. Sangani & Ors. ... Plaintiffs

V/s.

Rakesh V. Zangada & Ors. ... Defendants

Mr.Uday Kapasi i/b P.Kapasi & Co. for Plaintiffs
Ms.Madhuri Gosar for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 30, 2005**

P.C.:

. The Chamber Summons has been taken out to join Comtek Bizsoft Private Limited (for short, 'CBPL') either as Plaintiff No.4 or in the alternative as a proforma Defendant in the suit. This amendment is sought under Order 6 Rule 17 of the Civil Procedure Code. According to the plaintiffs, after resigning from the old company in which Plaintiff No.1 was a Director, it was agreed that the premises, namely, Office premises No.102, 103 and 104 at Mahavir Commercial Complex would be transferred to the new company. It is, therefore, submitted that since the new company is running its business from the premises, it would be appropriate to join them as party to the suit.

2. The learned Counsel appearing for the Defendants takes objection to this Chamber Summons being allowed. She submits that it is only because of the defences raised in the written statement to the effect that the suit is not maintainable on account of the non-joinder of necessary parties that the plaintiffs had moved the present Chamber Summons. She submits that if the Chamber Summons is allowed, the defences would be negated.

3. In my view, this Chamber Summons must be allowed since the Company CBPL is running its business from the premises which the plaintiffs claim belong to them. The suit has been filed for specific performance for completing and effecting the transfer of the property in the premises, viz., the office premises Nos.102, 103 and 104 at Mahavir Commercial Complex. It is CBPL which is running its business in these premises and, therefore, it would be a necessary party or in any event a proper party to the suit. In my opinion, it must be joined as proforma defendant.

4. Chamber Summons is therefore, allowed. The Company i.e., Comtek Bizsoft Private Limited shall be joined as a proforma defendant in the Suit. Amendments

shall accordingly be carried out within two weeks from today.